

**IN THE HIGH COURT AT CALCUTTA  
ORDINARY ORIGINAL CIVIL JURISDICTION  
ORIGINAL SIDE**

BEFORE:

**The Hon'ble Justice Ravi Krishan Kapur**

**AP/4/2024**

M/S WOW MOMO FOODS PRIVATE LIMITED

-VS-

M/S SULFYAZ AND ORS

For the Petitioner : Mr. Rahul Modak, Adv.  
Mr. Raunak Satpathy, Adv.

For the Respondent : Mr. Utpal Bose, Sr. Adv.  
Mr. Siddhartha Chatterjee, Adv.  
Ms. A. Upadhyay Agarwal, Adv.

Judgment on :07.10.2024

**Ravi Krishan Kapur, J.:**

1. This is an application under section 17(2) of the Arbitration and Conciliation Act 1996 seeking enforcement of an interim award dated 26 December 2023.
2. Briefly, the petitioner is a private limited company and is involved in the business of Quick Service Restaurant (QSR). The petitioner has different outlets and a widespread presence all over the country.
3. The respondent no 1 is a partnership firm having an office at Lulu Mall, Ernakullam, Kerala. The respondent no 2 is the managing partner of the

respondent no 1 and solely responsible for the affairs of the respondent no 1. The respondent no 2 is also the Managing Director and a 99% shareholder of a private limited company namely 11<sup>th</sup> Zense Food Pvt Ltd which runs an identical business as that of the petitioner.

4. In or about 2013, the respondent no. 1 approached the petitioner to run an outlet as a franchise of the petitioner. Thereafter, the parties entered into a franchise agreement dated 7 January 2013, alongwith a confirmation deed dated 24 April 2015 and an agreement to lease dated 16 February 2017. Pursuant to the above, the parties commenced operations from the restaurant of the respondent at Lulu Mall, Kerala.
5. In view of the disputes and differences primarily relating to defaults in payments by the respondent no 1, the petitioner was compelled to file an application under section 11 of the Arbitration and Conciliation Act 1996 for appointment of an Arbitrator. By an order dated 5 October 2023, a Sole Arbitrator was appointed to adjudicate the disputes between the petitioner and the respondent no.1 arising out of the above franchise agreement.
6. Pursuant to the above, the Sole Arbitrator entered upon reference. Subsequently, the petitioner filed an application under section 17 of the Act impleading 11<sup>th</sup> Zense Food Pvt Ltd as a party respondent. The crux of the case made out in the application was that the respondent no.1 and 2 had fraudulently and illegally started a competing business in the name of 11<sup>th</sup> Zense Food Pvt Ltd. 11<sup>th</sup> Zense Food Pvt Ltd contested the

application before the Arbitrator. By an interim award dated 26 September 2023, the Arbitrator held as follows :

*“In the light of the aforesaid reasons, I am of the considered view that this is an appropriate case for granting an interim order by granting injunction. Therefore, there shall be an interim order in the form of a temporary injunction against the respondents herein till the disposal of the arbitral proceeding in the following manner:*

- I. The respondents their men, agents, partners, directors or any person acting on their behalf are restrained from dealing in same category of business or any ancillary business of the same nature as that of the petitioner.*
- II. The respondent no.3 herein their men, agents, partners, directors or any person acting on their behalf are restrained from operating it's restaurant name “MOMO & ME” in all it's locations.*
- III. The respondents their men, agents, partners, directors or any person acting on their behalf are restrained from operating any restaurant, food kiosk being the same nature of business as that of petitioner.*
- IV. The respondents their men, agents, partners, directors or any person acting on their behalf are restrained from disseminating confidential information of the trade secret of the petitioner.”*

7. In this background, the petitioner seeks enforcement of the interim award. It is alleged by the petitioner that the respondent no 2 being the Managing Director and promoter of 11<sup>th</sup> Zense Food Pvt Ltd as well as the managing partner of respondent no 1 is involved in carrying on an

identical business under the name and style of 'Momo & Me' having a similar menu and a deceptively similar trade mark as that of the petitioner and also infringing the trademark, trade secrets, copyright and trade name of the petitioner. The respondent no 2 alongwith his family members have also fraudulently promoted 11<sup>th</sup> Zense Food Pvt Ltd which is in breach of the non competing clause in the franchise agreement.

8. In passing the interim award, the Sole Arbitrator has held that the connection and inter-relationship between the respondent no 2 and 11<sup>th</sup> Zense Food Pvt Ltd is established upon scrutinizing inter-alia the balance sheets, Articles of Association and other statutory filings which reflect the true and real relationship and connection between the respondents. In the above background, the acts of the respondents have been found to be fraudulent and illegal. The interim award is reasoned and considers all the issues including piercing of the corporate veil in case of group companies. In support of such contentions, the petitioner relies on the decisions in *Dow Chemical v Isover-Saint-Gobain*, ICC Case No. 4131, Interim Award dt. 23-9-1982, *Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc.*, (2013) 1 SCC 641, *Vidya Drolia v Durga Trading Corporation*, (2021) 2 SCC 1, *ONGC Ltd v Discovery Enterprise (P) Ltd*, (2022) 8 SCC 42 & *Mahanagar Telephone Nigam Ltd v Canara Bank*, (2020) 12 SCC 767 .
9. On behalf of the respondents, it is contended that the interim award passed by the Arbitrator is unsustainable since 11<sup>th</sup> Zense Food Pvt Ltd

was neither a signatory nor a party to the franchise agreement. 11<sup>th</sup> Zense Food Pvt Ltd is a separate juristic entity having an independent corporate personality and could not have been added as a party before the Arbitrator. In such circumstances, the Arbitrator had no jurisdiction to pass any order against a third party to the agreement. In passing the interim award, the Arbitrator has also travelled beyond the scope of the appointment. In support of such contentions, the respondent relies on *Asad Mueed & Anr. V Hammad Ahmed & Ors* (dated 14 February 2023, No. O.M.P(I)1/2023 & IA .2265/2023 ) and *M/s Arupri Logistics Pvt Ltd v Shri Vilas Gupta & Ors* [dated 24 July 2023 No. ARB.A.5/2022, IA.3270/2022 (Stay), I.A.8665/2023) passed by the High Court at Delhi].

10. Section 17 of the Act provides as follows:

*17. Interim measures ordered by arbitral tribunal.-- (1) A party may, during the arbitral proceedings, apply to the arbitral tribunal--*

- (i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or*
- (ii) for an interim measure of protection in respect of any of the following matters, namely:--*
  - (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;*
  - (b) securing the amount in dispute in the arbitration;*
  - (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;*
  - (d) interim injunction or the appointment of a receiver;*
  - (e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient, and the arbitral tribunal*

*shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it.*

*(2) Subject to any orders passed in an appeal under section 37, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were an order of the Court.] (emphasis added)*

11. Section 17 of the Act empowers an Arbitrator to pass orders to cover any foreseeable damage to a party to the proceeding. In view of the amended section 17(2), any order passed by an Arbitral Tribunal under section 17, subject to any order passed in appeal, is deemed to be an order enforceable under the Code of Civil Procedure, 1908 in the same manner as if it were an order of Court. A Court while exercising jurisdiction under section 17(2) of Act can only enforce an order of the Arbitral Tribunal and cannot sit in appeal over the decision of the Arbitral Tribunal.
12. The jurisdiction of an Arbitral Tribunal is based on consent of the parties. Ordinarily, orders cannot be passed against third parties who are neither signatories nor bound by the arbitration agreement. Nevertheless, in certain cases interim measures may be warranted against third parties if they derive their rights from or claim under a party to the arbitration agreement. In such exceptional circumstances, a more expansive approach is justified in the peculiar facts of a case. To this extent, the Arbitral Tribunal is not limited to passing interim measures against third parties. (*Ajay Madhusudan Patel and others vs. Jyotrindra S. Patel and others* 2024 SCC OnLine 2597 @ Para 66-82).

13. 11<sup>th</sup> Zense Food Pvt Ltd had been made a party respondent to the application under section 17 of the Act and contested the same. In passing the interim order, the Arbitrator had also concluded that the respondent no.2 is the proprietor, Managing Director and 99% shareholder of the 11<sup>th</sup> Zense Food Pvt Ltd along with his family members and that the respondent no.2 was the real person in control of both the respondent no.1 and 11<sup>th</sup> Zense Food Pvt Ltd and part of a single economic entity. The petitioner had also issued multiple representations and communications to each of the respondent no.1,2 and 11<sup>th</sup> Zense Food Pvt Ltd respectively. Admittedly, there is no challenge to the interim award and the same has attained finality.
14. In view of the above, in the limited jurisdiction which this Court exercises in disposing of an application under section 17 (2) of the Act, there is no scope to interfere with the interim award and the same is enforceable under sections 17(2) of the Act.
15. However, the present application has been filed without impleading or serving any notice on 11<sup>th</sup> Zense Food Pvt Ltd. There are also no particulars whatsoever as to the mode and manner in which the petitioner seeks enforcement of the interim award. There are no grounds which have been made out seeking the drastic relief of police assistance. The application has been filed mechanically and contains vague allegations bereft of any particulars. In view of the above, the application is dismissed by granting liberty to the petitioner to file an appropriate

application, in accordance with law containing full and necessary particulars and the nature of reliefs sought for, if so advised.

**( Ravi Krishan Kapur, J.)**